

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 133 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and Sd/-

MR.JUSTICE A.R.DAVE

Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

COMMISSIONER OF WEALTH TAX

Versus

NIKHIL V PATEL

Appearance:

MR BB NAIK FOR MR MANISH R BHATT for Petitioner
Respondent No. 1 SERVED

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE
Date of decision: 02/09/98

ORAL JUDGEMENT

(Per R.K.Abichandani, J.)

The Income Tax Appellate Tribunal has referred
the following question for the opinion of this Court

under Section 27 (1) of the Wealth Tax Act, 1957:

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the taxation liability provided for in the books without deducting therefrom the amount of advance tax paid, the taxation liability of earlier years not provided for in the books, the value of depreciable assets and gratuity liabilities of earlier years not provided for in the books, to be reduced for working out the break up value of the unquoted shares under Rule 1-D of the Wealth Tax Rules ?"

2. The Tribunal rejecting the contentions of the Revenue held that the taxation liability provided for in the books without deducting therefrom the amount of advance tax paid, the taxation liability of earlier years not provided for in the books, the value of depreciable assets and gratuity liability of earlier years not provided for in the books were required to be reduced for working out the break-up value of the unquoted shares under Rule 1-D of the said Rules by following the decision of this Court in the case of ASHOK K. PARIKH v. COMMISSIONER OF WEALTH TAX reported in 129 ITR 46. In Ashok K. Parikh (supra), this Court had taken a view while construing Clauses (i) (a) and (ii) (e) of Explanation II to Rule 1-D that, for the purpose of computation of the market value of the equity shares of a company, the advance tax paid under Section 210 of the Income Tax Act, 1961 and shown on the assets side of the balance sheet of the company, cannot be deducted from the tax payable, in determining whether the provision for taxation is in excess over the tax payable with reference to the book profits in accordance with the law applicable thereto within the meaning of Clause (ii) (e) of Explanation II to Rule 1-D of the said Rules.

3. The dispute centres around the treatment to be given to the advanced tax paid shown on the assets side of the balance-sheet of the company while working out the value of the equity shares on break-up value method. At the time of making of Reference, this question was pending before the Apex Court. Now, we have the benefit of the decision of the Apex Court in BHARAT HARI SINGHANIA v. C.W.T. reported in 207 ITR 1. The Supreme Court while construing the provisions of Rule 1-D of the Wealth Tax Rules, 1957, held that the said Rule was required to be followed in every case where unquoted equity shares of a company (other than an investment company or a managing agency company) have to be valued

and that all the authorities under the Act including the Valuation Officer were bound by the said Rule. It was further held that while valuing the unquoted equity shares under Rule 1-D, no deductions on account of capital gains tax which would have been payable in case the shares were sold on the valuation date can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. It was held that Rule 1-D was exhaustive on the subject.

4. The Supreme Court while construing the provisions of the said Rule 1-D read with Explanation II (ii) (e) of the said Rules held that, truly speaking, the advance tax paid is not really an asset, but, the proforma of balance sheet in Schedule VI to the Companies Act requires it to be shown as such. It was held that what Clause (i) (a) of the said Explanation did was to remove the said amount from the list of assets for the purpose of Rule 1-D. It is then that Clause (ii) (e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. The advance tax paid had already gone out of the profits and been debited in the account books of the company. It was held that this was the true function of both the sub-clauses. The Supreme Court in the process accepted the view of Andhra Pradesh, Karnataka, Punjab & Haryana High Courts and differed from the view taken by the Gujarat High Court in C.W.T. v. ASHOK K. PARIKH (supra).

5. In view of the decision of the Supreme Court in BHARAT HARI SINGHANIA v. C.W.T. (supra), we answer the question referred to this Court in the negative in favour of the Revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

Sd/-

[KMG Thilake]

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